Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47 the *Residential Tenancy Act* ("Act"). They also seek to recover the cost of the application filing fee under section 72 of Act.

It should be noted that section 55 of the Act requires that when a tenant applies to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Both parties, including a representative and an employee for the landlord attended the hearing on April 16, 2021. Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed (regarding conduct and prohibition on recording the hearing).

Preliminary Issue: Inadmissibility of Landlord's Evidence

After confirming that each side served the opposing party with their documentary evidence, one of the tenants remarked that, while they received a flash (USB) stick from the landlord, there was nothing on the stick. The landlord's employee (A.) testified that they copied a video file onto the stick and checked it to make sure that it was on the stick. The tenants reiterated that there were simply no files on the stick.

Rule 3.10.5 of the *Rules of Procedure* requires that

> Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence

In this case, the landlord did not confirm with the tenants whether they were able to gain access to the evidence. In other words, the landlord did not, once the flash stick was given to the tenants, confirm that they in fact could access a video file.

Further to Rule 3.10.5 of the *Rules of Procedure,* which states that "If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered," I will not consider the video evidence that the landlord submitted.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in 2014, and the tenants reside in a rental unit within a multi-unit apartment building on the third floor.

On January 15, 2021, the landlord served the Notice on the tenants, in person. A copy of the Notice is in evidence. Page one of the Notice includes the tenants' names, the landlord's name, is signed and dated January 15, 2021, and indicates a move out date of February 28, 2021.

Page two of the Notice notes that the landlord intends to end the tenancy because the tenants (1) significantly interfered with or unreasonably disturbed another occupant or the landlord, (2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and (3) put the landlord's property at significant risk.

Regarding the first reason stated, the landlord testified that there have been noise complaints from other tenants in the building. Most notably, from occupants living below the tenants. The noise issues came to a head in December 2020, just before Christmas. Copies of correspondence from the downstairs tenants were in evidence. The landlord testified that the noise issues are well documented.

Regarding the second and third reasons stated, the “primary reason” the landlord seeks to end the tenancy is that in early January 2021 the tenant (R.) was observed by a camera to be “vandalizing” another surveillance camera. The video evidence of the incident in question is the evidence that I have determined as in admissible.

The landlord’s building manager testified that she discovered the security camera to be pointed toward the building, instead of being pointed at the visitor parking and garbage bin area. The camera was purportedly in its incorrect position for a period of about six days (January 8 to 13). The landlord argued that the repositioning of the camera posed a loss of safety and security to the other tenants.

Regarding an additional reason for ending the tenancy, the landlord testified that the tenants had been storing improper items in their parking stall. This has happened repeatedly, according to the landlord. On June 10, 2020, the municipal fire department conducted an inspection of the property and found the tenants’ parking stall to be “unsatisfactory” due to the storage of combustibles. (A copy of the inspection report dated July 16, 2020 was in evidence.) According to a letter dated July 19, 2020 from the resident manager to the tenants, the manager comments that they had made “numerous verbal requests” to keep the parking stalls clean at all times. There is also in evidence a copy of a previous letter dated June 5, 2020, in which the resident manager refers to ongoing parking stall issues and concerns around cleanliness. And, further back, there is a letter dated May 28, 2020, in which the resident manager advises the tenants to cease repairing vehicles in the parking stall.

The tenant (R.) did not dispute that he touched the security camera but denied that he physically damaged the equipment. He explained that he was out for a walk on the evening in question and there was a “big storm . . . with 30-40 km/h winds.” He noticed that the camera bounced around and moved a bit (because of the high winds), so he turned it clockwise about half an inch to tighten it. The tenant thought that he was doing the landlord a favor, but apparently “these people took big offense to it.” Further, he disputed that the camera’s not facing the garbage area poses a risk to other tenants.

The tenants both testified about the noise issues, and read from a letter (basically, a reference letter of sorts) that, among other things, made note of the fact that a “loud noise” is a subject matter. And, that in the absence of any benchmark, a noise cannot be said to be loud.

Regarding the storage of items in the parking stall, the tenants explained that, yes, some items had been stored in there, such a large Tupperware container containing various automotive materials.

In rebuttal, the landlord argued that the garbage bin area is one of “the highest risk areas of the property,” and there are issues with vagrants and homeless individuals wandering through. The landlord further argued that the tenant’s moving of the security camera was “egregious” and that they had no right to move or even touch camera.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this dispute, the Notice was issued pursuant to section 47(1)(d) of the Act:

> A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;

In this dispute, there is no evidence before me to find that the tenant vandalized a security camera. The landlord’s evidence of this alleged act is inadmissible for reasons that I have explained. The tenant testified that he merely turned the camera. In short, there is insufficient evidence to persuade me that the tenant’s moving of the security camera put the landlord’s property at significant risk, or that this action somehow seriously jeopardized the health or safety or lawful right or interest of the landlord.

Indeed, I find it rather puzzling that the landlord described the garbage bin area as “the highest risk area” on the property, whilst remaining unaware of the security camera being pointed away from this area for almost a week. This is not to say, however, that the tenant ought to be fiddling with the camera. It is not his responsibility (aside from his background in security and his apparent desire to be helpful) to be touching or moving the landlord’s security cameras about.

There are noise complaints that purportedly are the basis for the claim that the tenants have unreasonably disturbed another occupant. However, I am inclined to agree with the position as described in the tenants’ letter: what constitutes a loud noise is subjective. The occupants of the property who complained about noise did not attend the hearing to describe their experience. Nor was any audio recording submitted to give me a sense of how loud the tenants actually were. One person’s stomping is another person’s light-footedness. I am not prepared to end a tenancy based on third party hearsay statements alone.

In respect of the parking stall area, while the landlord’s position is that the tenants have been warned on multiple occasions to tidy up the stall (and in fact a fire department inspection ordered that combustibles be removed), I am not persuaded by the totality of the evidence that the manner in which the tenants have used the parking stall gives rise to the level of putting the landlord’s property at significant risk. If tenants are prohibited from using a parking stall in a certain manner, then that prohibition must be contained within a term of the tenancy agreement. A breach of that term, then, may give a landlord to then issue a notice to end tenancy for breach of a material term (under section 47(1)(h) of the Act). However, this is not the case in this dispute.

Taking into careful consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving any of the three grounds on which the Notice was given. Therefore, I order that the Notice is cancelled and that it is of no legal force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Section 72(1) of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants succeeded in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

Pursuant to section 72(2)(a) of the Act, then, the tenants may make a one-time deduction of $100.00 from a future rent payment in full satisfaction of the award for the cost of the filing fee.

Conclusion

I order that the One Month Notice to End Tenancy for Cause, dated January 15, 2021, is hereby cancelled. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 19, 2021

Residential Tenancy Branch